Wanex Electrical Services, Inc. *and* International Brotherhood of Electrical Workers, Local Union 313. Case 5–CA–30202

September 30, 2002

DECISION AND ORDER

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

This case is before the National Labor Relations Board on the General Counsel's Motion for Summary Judgment. The General Counsel argues that summary judgment is proper because the Respondent failed to file a legally sufficient answer to the complaint under Board Rule 102.20. As explained below, we grant the General Counsel's motion and find that the Respondent violated Section 8(a)(5) and (1) of the Act as alleged in the complaint.

Procedural History

Upon a charge filed by the Union on January 29, 2002,[1] and an amended charge filed by the Union on March 11, the General Counsel issued a complaint against the Respondent on April 29. Copies of the charge, amended charge, and complaint were properly served on the Respondent.

The complaint alleges that the Respondent violated Section 8(a)(5) and (1) by unilaterally changing employees' wages without giving the Union notice and an opportunity to bargain, by failing to provide information requested by the Union, and by engaging in conduct that constituted a failure to bargain in good faith.[2] The complaint also alleges that the Respondent violated Section 8(a)(1) by promulgating a rule prohibiting discussion of wages and informing employees that discussion of wages would be a negative factor in their next review, and by stating in negotiations that bargaining was a waste of time, that employees did not want the Union, and that the Respondent was not interested in signing an agreement.

The Respondent's purported answer is a letter dated May 10 from Bruce Wanex, the Respondent's president, to the Board's Regional Office. The body of the letter states in full:

> Per your request, the following is our response to the Union statements: The statements made by the Union are misrepresentations of the truth. They are intentionally deceitful and malicious in nature with the sole purpose to put my company out of business. The Union has repeatedly stated, "You will sign out [sic] agreement or we will run you out of business."
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> It should also be noted that the employees of this company have repeatedly asked the NLRB to allow them to decertify the Union as their agent, with no help from the NLRB.

Before seeking summary judgment, the General Counsel notified the Respondent that it had failed to file an adequate answer, and gave the Respondent the opportunity to do so. However, the Respondent declined the opportunity. Specifically, according to undisputed allegations in the Motion for Summary Judgment, the Deputy Regional Attorney for Region 5 sent the Respondent a letter on June 27. The letter stated that the Regional Office had not received an answer to the complaint, and that unless an answer was received by July 5, the General Counsel would seek summary judgment.

On July 9, the parties held a conference call, in which President Wanex, Administrative Law Judge Jane Vandeventer, counsel for the General Counsel, and counsel for the Union participated. During the call, Wanex stated that the May 10 letter was his answer to the complaint. Counsel for the General Counsel stated that the letter was not an adequate answer under the Board's Rules and Regulations. The judge asked Wanex if he would file a further answer to the complaint, and Wanex said that he would not. Also on July 9, Deputy Chief Administrative Law Judge Richard A. Scully issued an Order postponing the hearing indefinitely to allow the General Counsel to move for summary judgment on the basis that the Respondent had failed to file an adequate answer. The Order reiterated President Wanex's statement that the May 10 letter would be the Respondent's only response to the complaint.

On July 17, the General Counsel filed a Motion to Transfer the Case to the Board and for summary judgment. On July 19, the Board issued an Order transferring the proceedings to the Board and a Notice to Show Cause why the Motion for Summary Judgment should not be granted. On August 6, apparently in response to the Notice to Show Cause, the Respondent filed a letter stating that the Respondent's current employees wish to decertify the Union and attaching a purported decertification petition. On August 19, the General Counsel filed a reply brief.[3]

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint itself cites Sections

[1] All dates are in 2002 unless otherwise specified.

[2] Because the Respondent allegedly failed and refused to bargain during the 1-year period following the Union's certification, the complaint seeks an extension of the certification year in accordance with *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962).

[3] Attached to the General Counsel's reply brief was a copy of an August 12, 2002 letter sent by the Acting Regional Director to the Respondent explaining how a decertification election may be initiated.

102.20 and 102.21 and affirmatively states that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted.

We find that the Respondent's May 10 letter does not constitute a proper answer under Section 102.20 of the Board's Rules and Regulations. The Board typically has shown some leniency toward a pro se litigant's efforts to comply with procedural rules. See, e.g., *Mid-Wilshire Health Care Center*, 331 NLRB 1032, 1033 (2000). Indeed, "[w]hen a pro se respondent's answer clearly denies the unfair labor practice allegations of the complaint, the Board will not grant summary judgment for the General Counsel even if the answer does not address all the factual allegations of the complaint." *American Gem Sprinkler Co.*, 316 NLRB 102, 103 fn. 5 (1995). In the present case, however, the Respondent's letter does not respond to any of the complaint's factual or legal allegations, but instead makes the general assertion that the "Union's statements" are "misrepresentations," "intentionally deceitful," and "malicious." Therefore, even considering the Respondent's pro se status, the letter is legally insufficient to constitute a proper answer.[4]

We further find that the Respondent has failed to correct the deficiencies in its answer. Although the Respondent submitted a response to the Notice to Show Cause, the response does not in any way correct the deficiencies of the May 10 letter.[5]

Accordingly, for all these reasons, we find that the Respondent has failed to show good cause and we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Delaware corporation with an office and place of business in New Castle, Delaware, has been engaged in the business of electrical construction and renovation. During the 12 months preceding issuance of the complaint, the Respondent, in conducting its business operations, purchased and received at its New Castle, Delaware facility materials and supplies valued in excess of $50,000 from other enterprises located within the State of Delaware, each of which, in turn, is directly engaged in interstate commerce. We find, as stipulated in Case 5–RC–14999, that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Bruce Wanex has held the position of president and has been a supervisor and agent of the Respondent within the meaning of Section 2(11) and (13) of the Act.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All electricians and electrician apprentices employed by Respondent at its New Castle, Delaware facility;
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> But excluding all truck drivers, office personnel, project managers, estimators and supervisors as defined in the Act.

On May 10, 2000, a representation election was conducted in Case 5–RC–14999 among the employees in the unit. On April 30, 2001, the Union was certified as the exclusive collective-bargaining representative of the unit. At all times since April 30, 2001, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about July 29, 2001, the Respondent, through its employee handbook, has promulgated a rule prohibiting discussion of wages among its employees and has informed employees that discussion of wages would be a negative factor in their next review.

Since about September 2001, the Respondent has made changes in the wages of its employees without prior notice to the Union, and without affording the Union an opportunity to bargain with the Respondent regarding this conduct or its effects. This subject relates to wages, hours, and other terms and conditions of employment of the unit employees and is a mandatory subject for the purpose of collective bargaining.

Since about October 23, 2001, the Union, by Danny Savina and John Patrick Healy, has orally requested that the Respondent furnish the Union with the following information: cost of benefits for each unit employee, benefit plan documents, and benefit plan summaries. This information is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since about October 23, 2001, the Respondent has failed and refused to furnish the Union with the requested information.

At various times during July 2001 through January 2002, the Respondent and the Union met for the purposes of collective bargaining with respect to wages, hours, and other terms and conditions of employment of the unit. During that period of time, the Respondent engaged in the following conduct: (a) it refused to meet and bargain in a meaningful manner; (b) it stated in bargaining sessions, through President Bruce Wanex, that employees

[4] The Respondent refused to submit a sufficient answer, despite opportunities to do so, and despite having been advised that the General Counsel considered the May 10 letter to be insufficient under the Board's Rules. During the parties' July 9 conference call, President Wanex affirmatively stated that the May 10 letter was the only response the Respondent would submit.

[5] Cf. *Century Parking*, 327 NLRB 21, 22 (1998) (General Counsel's Motion for Summary Judgment denied; in response to notice to show cause, respondent filed an amended answer curing the procedural defects in its initial answer).

did not want the Union, that bargaining was a waste of time, and that the Respondent was not interested in signing an agreement; (c) it stated in bargaining sessions, again through President Wanex, that the Respondent would continue negotiating for the rest of the year, but it was a waste of time; (d) it failed to make proposals or counterproposals; and (e) it refused to meet after January 22, 2002, for the purpose of negotiating a contract. By its overall conduct, including the conduct described above, the Respondent has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit.

CONCLUSIONS OF LAW

By promulgating a rule prohibiting discussion of wages among employees and informing employees that discussion of wages would be a negative factor in their next review; by making statements in bargaining sessions that bargaining is a waste of time, employees do not want the Union, and the Respondent is not interested in signing an agreement; and by the remaining acts and conduct described above, the Respondent has been interfering with, restraining, and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

By unilaterally changing employees' wages without giving the Union notice and an opportunity to bargain over the proposed changes, by failing and refusing to furnish the Union with requested information that is necessary and relevant to the performance of its duties as the exclusive collective-bargaining representative of the unit, and by engaging in conduct that constitutes a failure and refusal to meet and bargain in good faith with the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(1) by promulgating a rule prohibiting discussion of wages among employees and informing employees that discussion of wages would be a negative factor in their next review, we shall order the Respondent to rescind the rule, remove it from the employee handbook, and advise employees, in writing, that the rule is no longer being maintained and that discussion of wages will not be a negative factor in their next review.

Having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally changing unit employees' wages without giving the Union notice and opportunity to bargain, we shall order the Respondent to rescind the unlawful unilateral changes and to make whole the bargaining unit employees by remitting all wages, plus interest, that would have been paid absent such unilateral changes from September 2001 until the Respondent negotiates in good faith with the Union to agreement or to impasse. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). To the extent that the unlawful unilateral changes implemented by the Respondent may have improved the wages of unit employees, our Order shall not be construed as requiring or authorizing the Respondent to rescind such improvements unless requested to do so by the Union.

Having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to furnish information that is relevant and necessary to its role as the exclusive bargaining representative, we shall order the Respondent to furnish the Union with the requested information in a timely manner.

Having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to bargain in good faith with the Union for a collective-bargaining agreement, we shall order the Respondent to do so on request, and, if an understanding is reached, to embody that understanding in a signed agreement.

Finally, because the Respondent's failure and refusal to bargain in good faith precluded the Union from engaging in the collective-bargaining process during the Union's initial certification year, we find that a 1-year extension of the certification year, running from the date the Respondent begins to bargain in good faith, is necessary to effectuate the purposes of the Act and to allow the Union a reasonable period of time for good-faith bargaining, free from the influences of the unfair labor practices previously committed by the Respondent. See, e.g., *Burrows Paper Corp.*, 332 NLRB No. 15 fn. 3 (2000); *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962).

ORDER

The National Labor Relations Board orders that the Respondent, Wanex Electrical Services, Inc., New Castle, Delaware, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promulgating a rule prohibiting discussion of wages among employees and informing employees that discussion of wages will be a negative factor in their next review.

(b) Unilaterally changing the wages of employees in the following appropriate unit (the unit) without giving the International Brotherhood of Electrical Workers, Local Union 313, notice and an opportunity to bargain over the proposed change:

All electricians and electrician apprentices employed by Respondent at its New Castle, Delaware facility;

But excluding all truck drivers, office personnel, project managers, estimators and supervisors as defined in the Act.

(c) Failing and refusing to provide the Union with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

(d) Failing and refusing to meet and bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the unit.

(e) Failing to make proposals or counterproposals to the Union.

(f) Stating in bargaining sessions that bargaining is a waste of time, employees do not want the Union, and the Respondent is not interested in signing an agreement.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the rule prohibiting discussion of wages among employees, remove the rule from the employee handbook, and advise employees, in writing, that the rule is no longer being maintained and that discussion of wages will not be a negative factor in their next review.

(b) Rescind the changes made in unit employees' wages, and make whole the unit employees by remitting all wages, plus interest, that would have been paid absent such unilateral changes from September 2001, until the Respondent negotiates in good faith with the Union to agreement or to impasse. To the extent that the unlawful unilateral changes implemented by the Respondent may have improved the wages of unit employees, this Order shall not be construed as requiring or authorizing the Respondent to rescind those improvements unless requested to do so by the Union.

(c) Furnish the Union in a timely manner the information requested regarding cost of benefits for each unit employee, benefit plan documents, and benefit plan summaries.

(d) On request, meet and bargain in good faith with the Union for an initial collective-bargaining agreement, reducing to writing any agreement reached as a result of such bargaining. The Union's certification year shall be extended for 1 year from the commencement of bargaining, as set forth in the remedy section of the decision.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in New Castle, Delaware, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 2001.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 5 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 30, 2002

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Wilma B. Liebman, Member

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William B. Cowen, Member

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Michael J. Bartlett, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT promulgate a rule prohibiting discussion of wages among employees, and WE WILL NOT inform employees that discussion of wages will be a negative factor in their next review.

WE WILL NOT unilaterally change the wages of employees in the following appropriate unit without giving the International Brotherhood of Electrical Workers, Local Union 313, notice and an opportunity to bargain over the proposed changes:

All electricians and electrician apprentices employed by us at our New Castle, Delaware facility;

But excluding all truck drivers, office personnel, project managers, estimators and supervisors as defined in the Act.

WE WILL NOT fail and refuse to provide the Union with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

WE WILL NOT fail and refuse to meet and bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the unit.

WE WILL NOT fail to make proposals or counterproposals to the Union.

WE WILL NOT state in bargaining sessions that bargaining is a waste of time, that employees do not want the Union, and that we are not interested in signing an agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the rule prohibiting discussion of wages among employees, remove the rule from the employee handbook, and inform employees, in writing, that the rule is no longer being maintained and that discussion of wages will not be a negative factor in their next review.

WE WILL rescind the changes made in unit employees' wages, and make whole the unit employees by remitting all wages, plus interest, that would have been paid absent such unilateral changes from September 2001, until we negotiate in good faith with the Union to agreement or to impasse. To the extent that the unlawful unilateral changes we implemented may have improved the wages of unit employees, we will not rescind those improvements unless requested to do so by the Union.

WE WILL furnish the Union in a timely manner the information it requested regarding cost of benefits for each unit employee, benefit plan documents, and benefit plan summaries.

WE WILL meet and bargain in good faith with the Union, on request, for an initial collective-bargaining agreement, reducing to writing any agreement reached as a result of such bargaining. The Union's certification year shall be extended for 1 year from the commencement of bargaining.

WANEX ELECTRICAL SERVICES, INC.